cross-examination, under the guise of showing the "fixed charges" of manufacturing the articles in question, what amount of business plaintiff did, what it spent for advertising, what it spent for salesmen, what were the salaries of its officers, and what was spent for freight. *Held*, that the questions were properly excluded.

4. Plaintiff's president, having testified that the cost of steel under continuing contracts was three cents a pound, was further asked on cross-examination with whom his company had continuing contracts. Defendant's counsel stated that his purpose was to test the credibility of the witness, and that he intended to show that steel could not be bought at that price. In response to a question of the court, he further stated, however, that he could not say that he would attempt to show that the witness did not have any of the contracts testified to. *Held* that, as the only legitimate object of the question would have been to lay a foundation for impeachment, and as counsel disclaimed that purpose, the exclusion of the question was proper.

5. The vendor of material to be used in the manufacture of an article is not a subcontractor within the meaning of the rule excluding supposed advantages of a subcontractor in computing profits in the sale of a manufactured article.

6. Representations that plaintiff's bid for the work was as low as it could be done, and that there was no profit in it at the price bid, are mere expressions of opinion, and, although false, do not invalidate a contract made in pursuance thereof.

7. Rejecting a special defense is not prejudicial to defendant where the evidence in support of such special defense is admitted under the general issue.

8. A specification of a defense in that plaintiff corporation had not complied with the provisions of Code 1904, sec. 1104, prescribing the conditions upon which foreign corporations may do business within the State, was defective where it did not specify the particular in which plaintiff had failed to comply with the statutory requirements.

9. In an action for the breach by the vendee of an executory contract for the sale of articles to be manufactured, defendant could not complain of the ascertainment of plaintiff's "fixed charges" of manufacturing the articles by testimony as to the customary percentage to be deducted for such charges, where he introduced such testimony himself, and the jury returned a verdict for less than the amount of plaintiff's claim as computed by deducting the highest estimate made by defendant's witnesses for fixed charges.

10. A new trial will not be granted for refusal to permit evidence to be introduced, where substantially the same evidence is received without objection at a later stage of the trial.

LEWIS v. APPERSON.

March 9, 1905.

[49 S. E. 978.]

DOWER—RELINQUISHMENT—DEED—ESTOPPEL.

Code 1887, sec. 2502 [Va. Code 1904, p. 1272], provides that, when a husband and wife have signed a writing purporting to convey real estate, it may be recorded, and shall then operate to convey the wife's right of dower. In a suit to

subject an owner's land to liens, none of which were superior to his wife's dower right, a decree for the sale of the land was made. The wife joined the commissioner in executing a deed to the purchaser, reciting that the wife relinquished to the purchaser her rights in the premises. The deed was acknowledged and admitted to record. The wife was not guilty of any fraud whereby the purchaser was misled. The evidence did not show that she induced the purchaser to purchase the premises. *Held*, that the wife was not barred from claiming her dower right by her deed under the statute, inasmuch as her husband did not join therein, or by estoppel.

VIRGINIA & N. C. WHEEL CO. v. HARRIS.

March 9, 1905.

[49 S. E. 991.]

MASTER AND SERVANT—DEFECTIVE MACHINERY—PROMISE TO REPAIR—CONTINUING SERVICE—PLEADING—DEMURRER—INSTRUCTIONS.

1. A demurrer to an entire declaration, if one count is good, must be overruled.

[ED. NOTE.—For cases in point, see vol. 39, Cent. Dig. Pleading, secs. 486, 487.]

2. Where a demurrer is to an entire declaration, the assignment of causes of demurrer applicable to both counts does not enlarge the scope of the demurrer.

3. A declaration, in an action for injuries, charging that it was defendant's duty to use ordinary care to furnish plaintiff with a reasonably safe saw, that defendant was informed of its defective condition and promised to fix it, but directed plaintiff to continue his work, and failed to fix it as promised, by reason of which plaintiff was injured, is sufficient as against a demurrer assigning as grounds that it is indefinite and does not set out the alleged cause of action with sufficient particularity.

4. Where the servant is induced to continue to operate defective machinery by the master's order, coupled with a promise to repair the defect, the question whether a continuance in the service and use of the defective machinery is such negligence as to bar a recovery is for the jury.

5. An averment that a master promised to repair machinery, but failed and "refused" to do so, is not inconsistent with the theory that the promise induced the servant to incur a known danger.

6. Where defendant in an action for injuries by a saw introduced testimony that it was the track which caused the trouble, that it was fixed before the accident, and that another employé worked at the saw for six weeks after the accident, evidence showing the condition of the saw a week after the accident, and subsequent repairs, was admissible in rebuttal.

7. An instruction that if defendant promised to repair a saw, and failed to do so in a reasonable time, plaintiff would not be entitled to recover for that cause alone, but if afterwards plaintiff "failed to exercise the increased degree of care,